

08-2756
LOCALLY ASSESSED PROPERTY
SIGNED 07-23-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1,
PETITIONER 2,
PETITIONER 3,
PETITIONER 4 &
PETITIONER 5,

Petitioners,

v.

BOARD OF EQUALIZATION OF
SALT LAKE COUNTY, STATE OF UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 08-2756

Parcel Nos. ##### -1, ##### -2, ##### -3,
-4, ##### -5

Tax Type: Personal Property

Tax Year: 2008

Judge: Chapman

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37, the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP, Representative

For Respondent: RESPONDENT REP 1, Deputy Salt Lake County District Attorney
RESPONDENT REP 2, Witness

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 20, 2009.

At issue is the fair market value of certain personal property owned by the various Petitioners (collectively referred to as "Petitioners" or "property owners") as of the January 1, 2008 lien date. Specifically

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at issue is whether the correct classification table in Utah Admin. Rule R884-24P-33 (“Rule 33”) has been used to depreciate large, rolloff refuse containers (“rolloff containers”) owned and/or controlled by the property owners.

For valuation purposes, the County classified the rolloff containers as “Class 16 – Long-Life Property,” which is described in Rule 33(6)(o) as having a 20-year economic life. The property owners challenge the classification and ask that the rolloff containers be depreciated instead with a percent good table that reflects an economic life of 3 to 5 years.

The County contends that the property owners are asking the Commission to reclassify a “class” of property and that Rule 33 precludes the reclassification of a “class” of property through the appeals process. However, in case the Commission finds that the property owners may challenge the depreciation schedule used for the rolloff containers, the County also contends that the property owners have not submitted sufficient evidence to show that a different depreciation schedule is more appropriate than the Class 16 depreciation table that was used. For these reasons, the County asks the Commission to deny the property owners’ appeal.

APPLICABLE LAW

Utah Code Ann. §59-2-1005 provides that a taxpayer may appeal the value at which its personal property is assessed to the county legislative body, which shall hear the taxpayer’s appeal and issue a written decision. Subsection (4) provides that “[i]f any taxpayer is dissatisfied with a decision rendered . . . by the county legislative body, the taxpayer may file an appeal with the commission in accordance with Section 59-2-1006.”

Utah Admin. Rule R884-24P-33(6) provided that for 2008 assessment purposes, personal property is classified for valuation purposes based upon its expected economic life and provided, as follows in pertinent part:

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value

.....
(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, is classified by expected economic life as follows:

.....
(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

- (A) furniture;
- (B) bars and sinks;
- (C) booths, tables and chairs;
- (D) beauty and barber shop fixtures;
- (E) cabinets and shelves;
- (F) displays, cases and racks;
- (G) office furniture;
- (H) theater seats;
- (I) water slides; and
- (J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
07	92%

06	87%
05	80%
04	74%
03	62%
02	51%
01	38%
00	26%
99 and prior	13%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

- (A) billboards;
- (B) sign towers;
- (C) radio towers;
- (D) ski lift and tram towers;
- (E) non-farm grain elevators; and
- (F) bulk storage tanks.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
07	98%
06	96%
05	95%
04	94%
03	92%
02	89%
01	83%
00	78%
99	72%
98	65%
97	60%
96	54%
95	48%
94	43%
93	37%
92	30%
91	22%
90	15%
89 and prior	8%

DISCUSSION

First, the Commission will address whether the property owners may challenge through the appeals process the Rule 33 percent good schedule used to value their rolloff containers. If the Commission finds that the appeals process is an appropriate venue for the property owners to challenge the valuation of their rolloff containers, the Commission will determine whether the property owners have proffered sufficient evidence to show that the current valuation is incorrect and how the valuation should be determined.

Use of Appeals Process to Challenge Valuation. The County argues that values determined from Rule 33 percent good schedules may only be challenged through the appeals process for specific “items” of personal property. Rule 33(2)(c),(d). The County argues that the property owners in this case are not challenging the valuation of specific “items” of rolloff containers, but are challenging an entire “class” of property because they are requesting that a different percent good schedule be used to value all rolloff containers that they own. For these reasons, the County argues that the property owners should have requested a public hearing as set forth in Rule 33(2)(b) to request a classification change instead of using the appeals process.

The Commission disagrees. The property owners are not requesting a change that will affect an entire class or type of personal property. Their request will not affect all property valued with the Class 16 schedule of Rule 33. The property owners are requesting that a different depreciation schedule be used to value a specific item that they own, specifically rolloff containers. The Commission further notes that it is not required to schedule a public hearing under Rule 33(2)(b) unless requested by *ten or more* interested parties. Under the County’s argument, the *five* property owners in this case might have no venue to protest the values of their rolloff containers if they were the only interested parties who wanted a public hearing. Under these specific circumstances, the Commission finds that the appeals process is an appropriate venue for the property owners to request that a different percent good schedule be used to value their rolloff containers.

Valuation of Rolloff Containers. In its appeal to the County BOE, the property owners asked that all of their waste receptacles be valued with a depreciation schedule that reflects a 3 to 5-year economic life. At the Initial Hearing, however, the property owners only asked the Commission to address the valuation of their rolloff containers.¹ As a result, the only issue before the Commission in this hearing is whether the property owners' rolloff containers should be valued with a percent good table that reflects an economic life of 3 to 5 years instead of the Class 16 schedule that reflects an economic life of 20 years.

For the County, RESPONDENT REP 2 stated that Property Tax Division has determined that rolloff containers are more durable and have a longer economic life than other waste receptacles because the rolloff containers are not moved as often and because they are built of more durable, heavier steel than ordinary garbage dumpsters. RESPONDENT REP 2 proffered that the State of Oregon has also determined that rolloff containers have a longer life than other waste receptacles and values rolloff containers with a percent good schedule that reflects an 18-year economic life. RESPONDENT REP 2 also proffers, however, that all other western states value all waste receptacles, including rolloff containers, with a percent good schedule that reflects a 10-year life.

The property owners proffer that the Class 16 percent good schedule currently used to value their rolloff containers overestimates the economic lives of the containers and, thus, overestimate their values.

¹ Besides the large rolloff containers, it appears that the property owners may also own smaller garbage dumpsters and trash containers (i.e., the plastic containers supplied to residences for garbage pickup). For the County, RESPONDENT REP 2, an employee of the Property Tax Division of the Utah State Tax Commission, proffered that Property Tax Division has produced a Personal Property Classification Guide ("Guide"), which divides refuse containers into two classifications for depreciation purposes. First, the Division has determined that rolloff containers should be depreciated with the Class 16 percent good schedule, which reflects a 20-year economic life. Second, the Division has determined that the smaller garbage dumpsters and trash containers should be depreciated using the Class 5 – Long-Life Trade Fixtures depreciation schedule found in Rule 33(6)(d), which reflects a 10-year economic life. At the Initial Hearing, the property owners stated that the Class 5 depreciation schedule, which reflects a 10-year life, appears to be appropriate to value the smaller garbage dumpsters and trash containers.

As evidence, the property owners proffer during 2007 and 2008, they “retired” 293 rolloff containers in Utah. The property owners proffer that the 293 rolloff containers retired in 2007 and 2008 had economic lives ranging from 6 to 18 years, as follows:

<u>Number of Rolloff Containers</u>	<u>Economic Life</u>
217	6 to 11 Years
4	6 Years
22	12 Years
18	13 Years
27	14 Years
2	15 Years
<u>3</u>	18 Years
<u>293</u>	

The number of years for which the 293 retired rolloff containers were in service suggests that most rolloff containers have an economic life somewhere between 6 and 14 years. PETITIONER REP, the property owners’ representative, indicates that a 10-year economic life depreciation schedule appears appropriate to value the rolloff containers. However, based on the property owners’ request, he asks the Commission to value the rolloff containers with a depreciation schedule that reflects a 3 to 5-year economic life. The property owners’ own information, however, shows that rolloff containers have an economic life in excess of 3 to 5 years. Accordingly, the Commission denies the property owners’ request to value their rolloff containers with a percent good schedule that reflects an economic life of 3 to 5 years.

In addition, the Commission finds that the property owners’ limited information is insufficient to show that the Class 16 schedule used to value the rolloff containers is incorrect. First, RESPONDENT REP 2’ explanation that the rolloff containers last longer than other waste receptacles appears convincing. The property owners did not contest RESPONDENT REP 2’ assertion that rolloff containers are moved less often and are built more sturdily than other waste receptacles. Second, the property owners proffered a limited two-year history of rolloff container retirements. It is not known whether rolloff containers retired in other periods

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lasted longer than the ones retired in 2007 and 2008. Third, the property owners do not know how many rolloff containers they had in use in Utah or Salt Lake County for the 2008 tax year. Nor do they know how many years the rolloff containers still in use have been in service. Without such information, the Commission cannot determine whether the (X) containers retired in 2007 and 2008 had unusually short lives in comparison to their other rolloff containers that were retired or remain in service. Fourth, the property owners have no manufacturer's information to show that the rolloff containers, when purchased, were anticipated to have shorter economic lives than the 20 years reflected by the Class 16 schedule used to value the containers. For these reasons, the Commission finds that the property owners have not shown that their rolloff containers were improperly valued for the 2008 tax year.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the property owners have not submitted sufficient evidence to challenge the valuation of its rolloff containers for the 2008 tax year. Accordingly, the property owners' appeal is denied. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2009.

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Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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